of America. In accordance with applicable decisions of the Supreme Court of the United States, this plan was based upon the 1960 Federal decennial census for North Dakota.

V

Subsequent to the 1970 Federal decennial census for North Dakota, the Forty-second Legislative Assembly of the State of North Dakota failed, neglected and refused to adopt an apportionment plan for the North Dakota Legislature meeting the requirements of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The North Dakota Legislative Assembly has adjourned and is not scheduled to reconvene until 1973, after the next general election at which members of the Legislative Assembly will be elected. The North Dakota Legislative Assembly, in so failing to perform its mandatory obligation to enact an apportionment plan, has denied plaintiffs and each citizen of the State of North Dakota the equal protection of law guaranteed under the Fourteenth Amendment of the United States Constitution.

VI

As reflected by the 1970 Federal decennial census for North Dakota, there have been substantial shifts in population within the State of North Dakota in the years between 1960 and 1970. As a result, the apportionment plan adopted by the United States District Court under its order of August 10, 1965, no longer provides representation in the North Dakota Legislature on a basis complying with the requirements of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

VII

Unless enjoined by this Court, the defendant, Ben Meier, in performing his statutory duties as the Secretary of State for the State of North Dakota, will administer the laws relating to elec-

tion of members of the North Dakota Legislature during 1972 in accordance with the constitutionally invalid 1965 apportionment plan. The rights of the plaintiffs and each citizen of North Dakota guaranteed by the Fourteenth Amendment to the United States Constitution will thereby be irreparably abridged and denied.

VIII

Plaintiffs request this Court to establish by its order, an apportionment plan for the North Dakota Legislature based upon the 1970 Federal decennial census, meeting the requirements of the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and also providing for single member districts in accordance with the decision of the United States Supreme Court in the case of *Connor v. Johnson* (1971), — U.S. —, 29 Law Ed.2d 268, 91 Sup.Ct., P. —.

IX

Pursuant to 28 U.S.C. 2281, plaintiffs respectfully request that a three member Court be convened to hear and determine this cause. Alternatively, plaintiffs request that this cause be heard by a single member Court.

Wherefore, plaintiffs pray for judgment as follows:

(a) That the Court determine and declare that the 1965 apportionment plan for the North Dakota State Legislature, issued by the United States District Court for the District of North Dakota, is no longer valid under the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

(b) That the defendant, Ben Meier, be permanently restrained and enjoined from administering the laws pertaining to the election of members of the North Dakota Legislature under the existing 1965 apportionment plan.

(c) That this Court issue its order establishing a constitutionally valid apportionment plan for the North Dakota Legislature, based upon the 1970 Federal decennial census for North Dakota, said plan to provide for single member districts and requiring the defendant to comply with said plan in administering the election laws of the State of North Dakota.

Dated this 8th day of May, 1972.

/s/ JOHN D. KELLY
609½ First Avenue North
Fargo, North Dakota 58102
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

**ANSWER TO AMENDED COMPLAINT**

(Filed May 10, 1972)

(Number and Title Omitted)

The Defendant for his Answer to the Amended Complaint denies each allegation set forth in the Complaint except as otherwise admitted, qualified or modified herein.

I

The Fourteenth Amendment of the United States Constitution in itself does not confer jurisdiction. It is admitted that 28 U.S.C. Sections 1331, 1343 and 2281 confer jurisdiction upon

the Court, if the pleadings set forth the proper requisites. It is not admitted that the pleadings in this instance set forth the proper requisites.

II

Paragraph II of the Complaint is admitted.

III

Paragraph III of the Complaint is admitted except that portion sating that the Secretary of State is responsible for administering the election laws of this State is in part denied but as to his duties and functions set forth in Chapter 16-05 of the North Dakota Century Code the same are admitted.

IV

Paragraph IV of the Complaint is admitted.

V

Only that portion of Paragraph V stating that the Forty-second Legislative Assembly failed and neglected to adopt a valid reapportionment plan, and that the Legislature has adjourned and is not scheduled to meet again until 1973 after the next general election of 1972 is admitted.

VI

Only that portion of Paragraph VI stating that some shifts in population within the State of North Dakota have occurred between the years of 1960 and 1970 is admitted.

VII

Only that portion of Paragraph VII of the Complaint stating that the Secretary of State will perform his administrative duties according to the laws relating to the election of members to the Legislature is admitted.

VIII

Paragraph VIII of the Complaint is a request and a prayer to the Court and same is resisted.

IX

The Complaint fails to allege facts upon which relief can be granted and is lacking in other pertinent jurisdictional material making the same jurisdictionally void and defective as to the relief requested.

Wherefore, the defendant prays that the action be in all things dismissed and that all of the relief requested for by the plaintiffs be denied.

Dated this 9th day of May, 1972.

HELGI JOHANNESON
Attorney General

/s/ PAUL M. SAND
First Assistant Attorney General

Attorneys for Defendant, Ben Meier, Secretary of State

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

DANIEL CHAPMAN and JACQUE STOCKMAN,
Plaintiffs,
v.
BEN MEIER, Secretary of State for the State of North Dakota,
Defendant.

Civil No. 4664

Before BRIGHT, Circuit Judge; BENSON, Chief District Judge; and VAN SICKLE, District Judge.

**JUDGMENT**

(Entered and Filed January 30, 1974)

Pursuant to the order for judgment entered in the above entitled matter on the 30th day of January, 1974,

It Is Adjudged and Decreed that the reapportionment plan attached to the said order for judgment as Exhibit A, is adopted as the permanent plan for reapportionment of the state legislative districts of the State of North Dakota.

Dated this 30th day of January, 1974.

s PAUL BENSON
Chief Judge
United States District Court

s BRUCE M. VAN SICKLE
Judge
United States District Court

## Appendix B

### To Memorandum Opinion and Order

A legislative redistricting plan for North Dakota is submitted herewith for the Court's consideration. Some of the important features of this redistricting plan and the criteria used are as follows:

(1) The natural boundary imposed by the Missouri River should be recognized and any proposed legislative district should not cross the river.

(2) The magnitude of the deviation of a district population, above or below the state average, should be kept at a minimum.

(3) Legislative district boundaries should coincide with political subdivision boundaries to facilitate the work of election officials at election time.

(4) District compactness and avoiding elongated districts should be considered.

When criteria one and two above were studied, it became apparent that the number of solutions that could be suggested would be limited. According to the United States Census, there were 86,184 people west and south of the Missouri River in 1970 and 531,577 people east and north of the Missouri River. The total state population was 617,761. Accordingly, the number of legislators in a plan that most nearly equalizes legislative representation statewide is 43 senators and 86 representatives.

Additional solutions are 50 senators and 100 representatives; or 36 senators and 72 representatives. These three solutions would make it possible to keep the average number of people per senator on both sides of the river at a uniform level.

| No. of Senators | 50[a] | 43[b] | 36[c] |
|---|---|---|---|
| Average (West) | 12,312 | 14,364 | 17,236 |
| Average (East) | 12,362 | 14,367 | 17,147 |
| Statewide Average | 12,355 | 14,366.5 | 17,160 |

[a] Seven senators west of the Missouri River and forty-three senators east of the river.

[b] Six senators west of the Missouri River and thirty-seven senators east of the river.

[c] Five senators west of the Missouri River and thirty-one senators east of the river.

A review of the map and plan providing for 43 senators and 86 representatives shows that districts 3, 14, and 15 are elongated. This is in the more sparsely settled area of the state and more compactness, although desirable, could be attained only by disecting more counties and making the boundaries more irregular. However, there are main highway arteries east and west within each district and good hard-surfaced roads leading to them. Accordingly, the elongated districts were chosen as the least objectionable of the alternatives.

In this plan all district boundaries, except in the case of District 27 (Fargo), follow township lines so as to facilitate the work of election administration officials. District 27 includes the north half of rural Barnes township. However, this township is already divided into two precincts and it would merely be necessary to define new precinct boundaries.

Although this plan does not show a break up of "multisenator" districts, the population data recently available make it possible to do so should the Court so desire.

The Court's attention is directed to the district deviations from the state average of 14,367 people per senator. The deviations range from 375 below to 480 above the state average. The per-

cent deviation is − 2.61 percent to + 3.34 percent for a total variance of 5.95 percent.

If this suggested redistricting plan is adopted by the Court, it seems best in fairness to all concerned that the office of all incumbent senators be declared open for nomination and election in 1972 in the usual manner.

A description by townships for each suggested legislative district is submitted herewith.

POPULATION PER SINGLE SENATOR DISTRICT

| Number of State Senators | Population Per District |
|---|---|
| 50 | 12,355 |
| 49 | 12,607 |
| 48 | 12,870 |
| 47 | 13,144 |
| 46 | 13,430 |
| 45 | 13,728 |
| 44 | 14,040 |
| 43 | 14,367 |
| 42 | 14,709 |
| 41 | 15,067 |
| 40 | 15,444 |
| 39 | 15,840 |
| 38 | 16,257 |
| 37 | 16,696 |
| 36 | 17,160 |
| 35 | 17,650 |
| 34 | 18,169 |
| 33 | 18,720 |
| 32 | 19,305 |
| 31 | 19,928 |
| 30 | 20,592 |
| 29 | 21,302 |

The official resident population count of North Dakota as of April 1, 1970, was 617,761. (Bureau of the Census Report PC(1)A36, April, 1971, which represents the final count of resident population.) Prepared by Agricultural Economics Department, North Dakota Agricultural Experiment Station, North Dakota State University, Fargo, North Dakota, May, 1972.

Ostenson

## SUGGESTED LEGISLATIVE DISTRICTS

(Legislative districts based upon population count as provided by the Bureau of the Census for 1970).

| No. | Description of Area | Members Senate | Members House |
|---|---|---|---|
| 1. | Township 152 north of ranges 100, 103, and 104 west; townships 153, 154, and 155 north of ranges 100, 101, 102, 103, and 104 west; townships 156, 157, 158, and 159 north of ranges 101, 102, 103, and 104 west lying within the county of *Williams* | 1 | 2 |
| 2. | All of the county of *Williams* except the townships thereof which comprise District No. 1; county of *Mountrail;* townships 156, 157, and 158 north of range 87 west, lying within the county of *Ward* | 1 | 2 |
| 3. | County of *Divide*; county of *Burke;* township 160 north of ranges 84, 85, and 86; townships 161, 162, 163, and 164 north of ranges 84, 85, 86, and 87 west lying within the county of *Renville;* townships 159 and 160 north of ranges 87, 88, and 89 west; township 161 north of range 88 west lying within the county of *Ward* | 1 | 2 |

| No. | Description of Area | Members Senate | House |
|---|---|---|---|
| 4. | All of the county of *Ward* except the townships thereof which comprise a part of districts No. 2 and No. 3 | 4 | 8 |
| 5. | County of *Bottineau;* all of the county of *Renville* except the townships thereof which comprise a part of District No. 3; township 155 north of ranges 79 and 80 west; townships 156, 157, and 158 north of ranges 75, 76, 77, 78, 79, and 80 west; township 159 north of ranges 76, 77, 78, 79, and 80 west lying within the county of *McHenry* | 1 | 2 |
| 6. | All of the county of *McHenry* except the townships thereof which comprise a part of District No. 5; township 150 north of ranges 72 and 73 west lying within the county of *Wells;* townships 151, 152, 153, 154, and 155 north of ranges 72, 73, and 74 west lying within the county of *Pierce;* townships 151, 152, 153, 154, 155, and 156 north of ranges 68, 69, 70, and 71 west lying within the county of *Benson* | 1 | 2 |
| 7. | All of the county of *Pierce* except the townships thereof which comprise a part of District No. 6; all of the county of *Rolette* except the townships thereof which comprise a part of District No. 9 | 1 | 2 |
| 8. | All of the county of *Benson* except the townships thereof which comprise a part of District No. 6; all of the county of *Ramsey* except the townships thereof which comprise a part of districts No. 9 and No. 12 | 1 | 2 |

| No. | Description of Area | Members Senate | Members House |
|---|---|---|---|
| 9. | County of *Towner;* townships 161, 162, 163, and 164 north of range 69 west lying within the county of *Rolette;* townships 157 and 158 north of ranges 60, 61, 62, 63, and 64 west lying within the county of *Ramsey;* townships 159, 160, 161, 162, 163, and 164 north of ranges 60, 61, 62, 63, and 64 west lying within the county of *Cavalier* | 1 | 2 |
| 10. | All of the county of *Walsh* except the townships thereof which comprise a part of districts No. 11 and No. 12 | 1 | 2 |
| 11. | County of *Pembina;* townships 157 and 158 north of ranges 57, 58, and 59 west lying within the county of *Walsh;* townships 159, 160, 161, 162, 163, and 164 north of ranges 57, 58, and 59 west lying within the county of *Cavalier* | 1 | 2 |
| 12. | County of *Nelson;* townships 155 and 156 north of ranges 57, 58, and 59 west lying within the county of Walsh; townships 153 and 154 north of range 61 west; townships 155 and 156 north of ranges 60 and 61 west lying within the county of *Ramsey;* townships 151 and 152 north of ranges 55 and 56 west including all of the city of Larimore; townships 153 and 154 north of ranges 53, 54, 55, and 56 west lying within the county of *Grand Forks;* all of the county of *Griggs* except the townships thereof which comprise a part of District No. 25 | 1 | 2 |

| No. | Description of Area | Members Senate | Members House |
|---|---|---|---|
| 13. | All of the county of *Grand Forks* except the townships thereof which comprise a part of District No. 12 | 4 | 8 |
| 14. | County of *McKenzie;* all of the county of *Dunn* except the townships thereof which comprise a part of District No. 15; all of the county of *Mercer* except the townships thereof which comprise a part of District No. 15 | 1 | 2 |
| 15. | County of *Golden Valley;* county of *Billings;* all of the county of *Stark* except the townships thereof which comprise District No. 16; townships 141, 142, 143, and 144 north of ranges 91, 92, 93, 94, 95, 96, and 97 west lying within the county of *Dunn;* townships 141, 142, and 143 north of ranges 88, 89, and 90 west lying within the county of *Mercer;* county of *Oliver* | 1 | 2 |
| 16. | Townships 139 and 140 north of ranges 94, 95, 96, and 97 west lying within the county of *Stark* | 1 | 2 |
| 17. | County of *Adams;* county of *Bowman;* county of *Hettinger;* county of *Slope* | 1 | 2 |
| 18. | County of *Grant;* county of *Sioux;* townships 134, 135, and 136 north of range 84 west; township 137 north of ranges 85, 86, and 87 west; townships 138, 139, and 140 north of ranges 85, 86, 87, 88, 89, and 90 west lying within the county of *Morton* | 1 | 2 |
| 19. | All of the county of *Morton* except the townships thereof which comprise a part of District No. 18 | 1 | 2 |

| No. | Description of Area | Members Senate | Members House |
|---|---|---|---|
| 20. | County of *McLean;* county of *Sheridan* .... | 1 | 2 |
| 21. | County of *Burleigh;* townships 137, 138, 139, 140, 141, 142, 143, and 144 north of ranges 72, 73, and 74 west lying within the county of *Kidder* ..... | 3 | 6 |
| 22. | County of *Stutsman;* all of the county of *Kidder* except the townships thereof which comprise a part of District No. 21; townships 133, 134, 135, and 136 north of ranges 67, 68, 69, and 70 west lying within the county of *Logan;* townships 135 and 136 north of ranges 63 and 64 west; townships 133, 134, 135, and 136 north of ranges 65 and 66 west lying within the county of *LaMoure* ..... | 2 | 4 |
| 23. | County of *Eddy;* county of *Foster;* all of the county of *Wells* except the townships thereof which comprise a part of District No. 6 .... | 1 | 2 |
| 24. | County of *Barnes* ..... | 1 | 2 |
| 25. | County of *Steele;* county of *Traill;* townships 144, 145, 146, 147, and 148 north of range 58 west; townships 144 and 145 north of range 59 west lying within the county of *Griggs* ..... | 1 | 2 |
| 26. | All of the county of *Cass* except the parts thereof which constitute District No. 27 .... | 1 | 2 |
| 27. | The city of Fargo; the city of West Fargo; the city of West Fargo Industrial Park; township 140 north of range 48 west; sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18 of township 139 north of range 49 west lying within the county of *Cass* ..... | 4 | 8 |

| No. | Description of Area | Members Senate | House |
|---|---|---|---|
| 28. | County of *Emmons;* all of the county of *Logan* except the townships thereof which comprise part of District No. 22; all of the county of *McIntosh* except the townships thereof which comprise a part of District No. 29 | 1 | 2 |
| 29. | County of *Dickey;* all of the county of *La-Moure* except the townships thereof which comprise a part of District No. 22; townships 129, 130, 131, and 132 north of ranges 67 and 68 west lying within the county of *McIntosh;* townships 129, 130, 131, and 132 north of ranges 57 and 58 west lying within the county of *Sargent;* townships 133, 134, and 135 north of ranges 57 and 58 west; township 136 north of range 58 west lying within the county of *Ransom* | 1 | 2 |
| 30. | All of the county of *Ransom* except the townships thereof which comprise a part of District No. 29; all of the county of *Sargent* except the townships thereof which comprise a part of District No. 29; townships 129, 130, 131, 132, 133, 134, 135, and 136 north of ranges 51 and 52 west lying within the county of *Richland* | 1 | 2 |
| 31. | All of the county of *Richland* except the townships thereof which comprise a part of District No. 29 | 1 | 2 |

| Legislative District | Population | Population Senator | Deviation from Average[a] | Percent Deviation from Average[b] |
|---|---|---|---|---|
| 1 | 14,167 | 14,167 | —200 | —1.39 |
| 2 | 13,992 | 13,992 | —375 | —2.61 |
| 3 | 14,240 | 14,240 | —127 | — .88 |
| 4 | 55,972 | 13,993 | —374 | —2.60[c] |
| 5 | 14,216 | 14,216 | —151 | —1.05 |
| 6 | 14,248 | 14,248 | —119 | — .83 |
| 7 | 14,117 | 14,117 | —250 | —1.74 |
| 8 | 14,310 | 14,310 | — 57 | — .40 |
| 9 | 14,242 | 14,242 | —125 | — .87 |
| 10 | 14,159 | 14,159 | —208 | —1.45 |
| 11 | 14,012 | 14,012 | —355 | —2.47 |
| 12 | 14,300 | 14,300 | — 67 | — .47 |
| 13 | 57,407 | 14,352 | — 15 | — .10[c] |
| 14 | 14,523 | 14,523 | 156 | 1.09 |
| 15 | 14,175 | 14,175 | —192 | —1.34 |
| 16 | 14,243 | 14,243 | —124 | — .86 |
| 17 | 14,292 | 14,292 | — 75 | — .52 |
| 18 | 14,450 | 14,450 | 83 | .58 |

[a] Average population per senator is 14,367 (43 senators and 86 representatives).

[b] Range in deviation from average + 3.34 percent and — 2.61 percent variance = 5.95 percent.

[c] Multisenator district.

| Legislative District | Population | Population Senator | Deviation from Average[a] | Percent Deviation from Average[b] |
|---|---|---|---|---|
| 19 | 14,501 | 14,501 | 134 | .93 |
| 20 | 14,483 | 14,483 | 116 | .81 |
| 21 | 43,564 | 14,521 | 154 | 1.07[c] |
| 22 | 29,156 | 14,578 | 211 | 1.47[c] |
| 23 | 14,149 | 14,149 | —218 | —1.52 |
| 24 | 14,669 | 14,669 | 302 | 2.10 |
| 25 | 14,404 | 14,404 | 37 | .26 |
| 26 | 14,266 | 14,266 | —101 | — .70 |
| 27 | 59,387 | 14,847 | 480 | 3.34[c] |
| 28 | 14,483 | 14,483 | 116 | .81 |
| 29 | 14,690 | 14,690 | 323 | 2.25 |
| 30 | 14,731 | 14,731 | 364 | 2.53 |
| 31 | 14,213 | 14,213 | —154 | —1.07 |
| Total | 617,761 | | | |

[a] Average population per senator is 14,367 (43 senators and 86 representatives).

[b] Range in deviation from average + 3.34 percent and − 2.61 percent variance = 5.95 percent.

[c] Multisenator district.

**Original Section 26**

**Constitution of North Dakota**

The senate shall be composed of not less than 30 nor more than 50 members.

**Amendment to Section 26**

**Constitution of North Dakota**

Enacted June 28, 1960

The senate shall be composed of 49 members.

**Original Section 29**

**Constitution of North Dakota**

The legislative assembly shall fix the numbers of senators, and divide the state into as many senatorial districts as there are senators, which districts, as nearly as may be, shall be equal to each other in the number of inhabitants entitled to representation. Each district shall be entitled to one senator and no more, and shall be composed of compact and contiguous territory; and no portion of any county shall be attached to any other county, or part thereof, so as to form a district. The districts as thus ascertained and determined shall continue until changed by law.

**Amendment to Section 29**

**Constitution of North Dakota**

Enacted June 28, 1960

Each existing senatorial district as provided by law at the effective date of this amendment shall permanently constitute a senatorial district. Each senatorial district shall be represented by one senator and no more.

**Original Section 35**

**Constitution of North Dakota**

The members of the house of representatives shall be apportioned to and elected at large from each senatorial district. The legislative assembly shall in the year 1895, and every tenth year cause an enumeration to be made of all the inhabitants of this state, and shall at its first regular session after each such enumeration, and also after each federal census, proceed to fix by law the number of senators, which shall constitute the senate of North Dakota, and the number of representatives which shall constitute the house of representatives of North Dakota, within the limits prescribed by this constitution, and at the same session shall proceed to reapportion the state into senatorial districts as prescribed by this constitution, and to fix the number of members of the house of representatives to be elected from the several senatorial districts; provided, that the legislative assembly may, at any regular session, redistrict the state into senatorial districts, and apportion the senators and representatives respectively.

**Amendment to Section 35**

**Constitution of North Dakota**

Enacted June 28, 1960

Each senatorial district shall be represented in the House of Representatives by at least one representative except that any senatorial district comprised of more than one county shall be represented in the House of Representatives by at least as many representatives as there are counties in such senatorial district. In addition the Legislative Assembly shall, at the first regular session after each federal decennial census, proceed to appor-

tion the balance of the members of the House of Representatives to be elected from the several senatorial districts, within the limits prescribed by this Constitution, according to the population of the several senatorial districts. If any Legislative Assembly whose duty it is to make an apportionment shall fail to make the same as herein provided it shall be the duty of the chief justice of the supreme court, attorney general, secretary of state, and the majority and minority leaders of the House of Representatives within ninety days after the adjournment of the legislature to make such apportionment and when so made a proclamation shall be issued by the chief justice announcing such apportionment which shall have the same force and effect as though made by the Legislative Assembly.

MAR 20
MICHAEL

IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 73-1406

DANIEL CHAPMAN and JACQUE STOCKMAN,
Appellants,

vs.

BEN MEIER, Secretary of State for the
State of North Dakota,
Appellee.

## JURISDICTIONAL STATEMENT

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IN THE

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. .....

DANIEL CHAPMAN and JACQUE STOCKMAN,
Appellants,

vs.

BEN MEIER, Secretary of State for the
State of North Dakota,
Appellee.

## JURISDICTIONAL STATEMENT

Appellants, Daniel Chapman and Jacque Stockman, appeal from the Judgment of the three-judge United States District Court for the District of North Dakota entered and rendered against appellants on January 30, 1974. The Opinion has not as yet been reported. A copy of the Opinion, including the dissent by Judge Bright, is included in the Appendix, together with the Court's Order of May 22, 1972, and the Memorandum Opinion and Order entered June 30, 1972, including the dissent by Judge Benson. These Orders have also not been reported.